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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,304	11/18/2003	Tohru Haruna	1858-30	5939
23117 7590 01/09/2007 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			EXAMINER SHIAO, REI TSANG	
			ART UNIT	PAPER NUMBER
			1626	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/09/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/009,304	Applicant(s) HARUNA ET AL.	
	Examiner Robert Shiao	Art Unit 1626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on RCE of 10009304 filed on 09/08/2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This application claims benefit of the foreign application: JAPAN 11/168864 with a filing date 06/15/1999. Since the English-translated version of the foreign priority document has been filed to the Office on September 08, 2006, the foreign priority has been granted herein.
2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 08, 2006, has been entered.
3. The amendment of claim 7 and a terminal disclaimer in the amendment filed on September 08, 2006, is acknowledged. Claims 1-11 are pending in the application.

Responses to Amendment/Arguments

4. The rejection of claims 7-11 under 35 U.S.C. 112, second paragraph has been overcome in the amendment filed on September 08, 2006.
5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application

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by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Applicant's arguments regarding the rejection of claims 1-11 under 35

U.S.C. 103(a) over Nakamura et al. US 6,153,715, filed on September 08, 2006, have been fully considered but they are not persuasive. Nakamura et al. '715 is 102 (e) reference with a filing date September 17, 1998, and which is prior to the instant foreign priority date, i.e., June 15, 1999. It is noted that Nakamura et al. phosphoric aromatic ester metal salt can be fused not higher than 220 degree, see column 8, lines 42-65.

Moreover, to demonstrate unobviousness, applicants must show unexpected result stemming from the instant compositions over the compositions of Nakamura et al. in form of mechanical advantages of the instant compositions over the compositions of Nakamura et al. The rejection of claims 1-11 under 35 U.S.C. 103(a) over Nakamura et al. '715 is maintained.

6. Applicant's arguments regarding the rejection of claims 1-11 under 35

U.S.C. 103(a) over Takahashi et al. US 6,184,275, filed on September 08, 2006, have been fully considered and they are persuasive. Takahashi et al. '275 is disqualified as a reference under 35 U.S.C. 103(c). The rejection of claims 1-11 under 35 U.S.C. 103(a) over Takahashi et al. US 6,184,275, has been withdrawn herein.

7. Applicant's arguments regarding the rejection of claims 1-11 under 35 U.S.C. 103(a) or the obviousness-type double patenting over Nakahara et al. US 4,463,113, filed on September 08, 2006, have been fully considered and they are persuasive. The critical structural characteristics of the instant nucleating agent of formula (I) has not been found in Nakahara et al. '113. The rejection of claims 1-11 under 35 U.S.C. 103(a) or the obviousness-type double patenting over Nakahara et al. US 4,463,113, has been withdrawn herein.

8. Since the terminal disclaimer has been filed and approved in the Office, the rejection of claims 1-6 under the obviousness-type double patenting over Takahashi et al. US 6,184,275, has been overcome in the amendment filed on September 08, 2006.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Shiao whose telephone number is (571) 272-0707. The examiner can normally be reached on 8:30 AM - 5:00 PM.

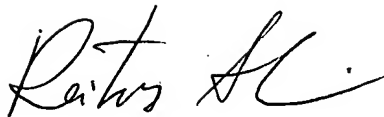
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph K. McKane can be reached on (571) 272-0699. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Robert Shiao". The signature is fluid and cursive, with the first name "Robert" and last name "Shiao" clearly distinguishable.

Robert Shiao, Ph.D.
Patent Examiner
Art Unit 1626

January 3, 2007